

Attorney Self-Assessment



Iowa Supreme Court
Attorney Disciplinary Board
March 2020

Comprehensive Attorney Self-Assessment Questionnaire¹

This self-assessment questionnaire lists objectives with indicative criteria to assist the attorney in addressing each objective and/or implementing appropriate measures in the attorney's practice. It is a tool to help attorneys with their professional development both by giving attorneys an opportunity to engage in self-examination and by providing resources to assist attorneys in developing workable solutions to common challenges. The questionnaire is designed to increase competence and efficiency, mitigate risk, and enhance the quality of legal services provided to clients by focusing on preventing problems before they arise.²

Not every question applies to every law practice, so it is acceptable to skip a question if it is not applicable. Please note that this questionnaire references some educational resources more than once because they address a variety of professionalism topics.

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¹ This questionnaire is adapted with permission from “Colorado Consolidated Lawyer Self-Assessment,” published by the Proactive Management-Based Program Subcommittee of the Colorado Supreme Court Office of Attorney Regulation Counsel.

² The Attorney Disciplinary Board will attempt to keep this document current at all times, but attorneys should ensure that they consult the latest versions of all Court Rules and review recent caselaw. This document is not intended to be an “advisory opinion” under Court Rule 34.7 and is not legal advice. Attorneys may ensure that they are using the latest version of the self-assessment tool by contacting the Board directly at 515-348-4680.

I. COMPETENCE

Iowa Rule of Professional Conduct 32:1.1 requires lawyers to provide competent representation to clients. Competence encompasses the requisite legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A lawyer should consider issues of competence when (1) accepting a new matter or (2) substantively or procedurally expanding an existing matter.

| Question | Yes | No | Ethical Implications | Additional Resources |
|--|-----|----|---|---|
| When taking on a new matter, do you assess whether you have the legal knowledge and education to handle the matter? | | | | |
| Does your assessment include: | | | A lawyer cannot delegate the duty of competence to the client. <i>See In re Shipley</i> , 135 S. Ct. 1589, 1589–90 (2015). | Alan Gutterman, Practical Challenges of Meeting Your Duties of Competence and Diligence to Your Clients , LEGAL SOLUTIONS BLOG (THOMSON REUTERS) (July 18, 2016). |
| 1. Whether you are familiar with the applicable governing law? | | | | |
| 2. Whether you are familiar with the governing procedural rules? | | | A lawyer must not charge a client fees for excessive time spent achieving competence. <i>See</i> IRPC 32:1.5; <i>see also In re Estate of Larson</i> , 694 P.2d 1051, 1059 (Wash. 1985) (en banc). | Christopher Sabis & Daniel Webert, <i>Understanding the “Knowledge” Requirement of Attorney Competence: A Roadmap for Novice Attorneys</i> , 15 GEO. J. LEGAL ETHICS 915 (2002). |
| 3. Whether you are familiar with any recent changes in applicable substantive or procedural law? | | | | |
| 4. Whether you are familiar with the factual context and subject matter? | | | | |
| 5. Whether you are familiar with the governing Rules of Professional Conduct? | | | For more guidance on ethical issues associated with the decision to retain or contract with other lawyers, see IRPC 32:1.1 cmts. 6 & 7 . | Iowa Supreme Ct. Att’y Disciplinary Bd. v. Turner, 918 N.W.2d 130, 149 (Iowa 2018) (finding attorney violated rule 32:1.1 by, inter alia, “present[ing] paper bankruptcy petitions, even though electronic filing has been mandated since 2000”). |
| If you find that you do <u>not</u> have the legal knowledge to handle a matter, do you assess whether you can: | | | A lawyer does not necessarily need special training or prior experience to handle an unfamiliar legal issue. Depending on the situation, competence may be achieved through application of existing skills, research, or association with another lawyer. <i>See</i> IRPC 32:1.1 cmt. 2 . | |
| 1. Timely acquire the knowledge to handle the case and whether you have resources available to do so? | | | | |
| 2. Learn from or get supervision or mentorship from a lawyer with established knowledge in the relevant field? | | | | |
| 3. Limit the scope of representation to work within your current knowledge base or within the reasonably-expandable scope of your knowledge base? | | | A lawyer who realizes he or she has a competence problem should immediately seek assistance: a failure to properly address incompetence can quickly lead to other serious acts of misconduct. | Helen Hierschbiel, The Ethics of Unbundling , OR. STATE BAR BULL., July 2007. |
| 4. Have the client provide informed consent (preferably in writing after a full explanation of the competencies necessary) to a limited scope of representation? | | | | |
| | | | It is important to understand the form and substance of the disclosure required to be made to the client to obtain informed consent. <i>See</i> IRPC 32:1.4 . | |

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|---|---|
| When taking on new matters, do you assess whether you have sufficient expertise, training, or access to mentoring or other assistance such that you have the legal skills to handle the cases? (application of skills to black letter law) | | | | |
| Does your assessment include: | | | The scope of a matter will affect the competence the lawyer will need to possess. See IRPC 32:1.1 cmt. 5 . | Mark Bassingthwaite, Getting It Right with Client Selection , ALPS BLOG (Aug. 26, 2014). |
| 1. Whether you have handled matters in the same practice area before? | | | | |
| 2. Whether you have handled matters of similar complexity in the past? | | | | |
| 3. Whether the representation involves any special licenses or authorizations? | | | The duty of competence also requires maintenance—keeping up-to-date about changes in the law as well as technology. See IRPC 32:1.1 cmt. 8 . | |
| 4. Whether you can analyze precedent, issue spot, evaluate evidence, and draft legal documents in the new matters? | | | | |
| 5. Whether you are familiar with and can employ relevant technologies necessary for the representation? | | | For more guidance on ethical issues associated with the decision to retain or contract with other lawyers, see IRPC 32:1.1 cmts. 6 & 7 . | |
| 6. Whether the new matters involve compliance with different rules or procedures than those with which you have had prior experience? | | | | |
| If you do <u>not</u> have the skills-based competence to handle a new matter, do you assess whether you can: | | | For more guidance on ethical issues associated with limiting the scope of representation, see IRPC 32:1.2 . | |
| 1. Timely acquire the skills necessary to handle the matter? | | | | |
| 2. Limit the scope of your representation to work within your current skill set or within the reasonably expandable scope of your skill set? | | | | |
| 3. Learn from or get supervision or mentorship from a lawyer with established skills in this field? | | | | |
| Before taking on new matters, do you ask whether you have the necessary resources (time, finances, staffing, infrastructure, outside advice, and willingness) available to prepare adequately and offer thorough representation? | | | | |
| Does your assessment include: | | | Lawyers may not have or have reasonable access to the documentation necessary to make appropriate factual assertions and legal arguments. Lawyers must devote the time to develop what is necessary to adequately perform the representation. | ABA Comm'n on Ethics & Prof'l Resp., Formal Op. 06-441 (2006) (discussing ethical obligations of lawyers who represent indigent criminal defendants when excessive caseloads interfere with competent and diligent representation). |
| <u>Time</u> | | | | |
| 1. Whether you have the time to handle new matters without neglecting existing professional or personal obligations? Conversely, whether other obligations might impede providing adequate representation? | | | | |
| 2. Whether you have time to investigate and develop the factual aspects of the new matters? | | | Failure to spend sufficient time investigating the factual and legal | |

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|--|--|
| 3. Whether you have time to investigate and develop all legal aspects of the new matters? | | | bases for an action could result in an adverse finding that a matter is frivolous or could result in the imposition of sanctions under IRCP 1.413(1) . See also IRPC 32:1.1, 3.1 . Making representations without due diligence or expressing insufficiently qualified opinions may violate duties to third parties under the Rules of Professional Conduct and other sources of legal authority. Lawyers are required to “inform themselves about the facts of their clients’ cases and the applicable law.” IRPC 32:3.1 cmt. 2 . | <i>In re Nunnery</i> , 725 N.W. 2d 613, 625–26 (Wis. 2007) (suspending lawyer for two months because he did not conduct a meaningful inquiry into the veracity of documents presented by his client). Frank T. Lockwood, Reinventing Client Selection and Case Management , GP SOLO, July/Aug. 2014, at 38. |
| 4. Whether the new clients have needs or preferences that require additional time? If so, whether you have the time and patience to handle the cases properly? | | | | |
| 5. Whether, if time is an issue, it would be prudent to refer the matters to a lawyer with the skill set and time to handle the representation? | | | | |
| <u>Financial Resources and Reserves</u> | | | | |
| 1. Whether your fees will support developing both the factual and legal aspects of the matters you undertake? | | | | Mark Bassingthwaighe, Getting It Right with Client Selection , ALPS BLOG (Aug. 26, 2014). |
| 2. Whether your business model allows you to assume the financial risk involved if problems arise in the representation? | | | | |
| 3. Whether your business model supports access to the professional advice of others who can assist you to understand the technical aspects of the matters you take on (attorneys, accountants, physicians, etc.)? | | | | |
| 4. Whether you have sufficient financial liquidity to support the fee structure or payment timing of the representation? | | | | |
| 5. Whether, if necessary, you can modify your fee structure so that you can provide adequate representation? | | | | |
| <u>Staffing</u> | | | | |
| 1. Whether your staff has sufficient time to handle the new matters? | | | Lawyers with supervisory authority over one or more nonlawyers must make reasonable efforts to ensure that the nonlawyer’s conduct is compatible with the professional obligations of the lawyer. IRPC 32:5.3(b) . | David V. Wilson II, Focus on Law Practice Management: Supervising Staff and Technology , AM. BAR ASS’N (Aug. 19, 2019). |
| 2. Whether staff has the knowledge and training to handle the cases? | | | | |
| 3. Whether those staff members have the skills to handle the cases? | | | In considering the appropriate level of instruction and supervision for nonlawyers, lawyers should take into account that nonlawyers do not have legal training and are not subject to professional discipline. IRPC 32:5.3 cmt. 2 . | |
| 4. If your staff lacks competency to handle a case, whether you can: | | | | |
| a. Timely hire the necessary staff? | | | | |
| b. Timely train existing staff? | | | | |
| c. Appropriately supervise the necessary staff? | | | | |

| Question | Yes | No | Ethical Implications | Additional Resources |
|--|-----|----|--|---|
| <u>Infrastructure</u> | | | | |
| 1. Whether you have access to research resources to answer legal questions presented by cases? | | | Lawyers have a duty to “keep abreast of changes in communications and other relevant technologies.” IRPC 32:1.1 cmt. 8. | Daniel Garrie, <i>E-Discovery Incompetence Could Cost You Your Legal License – Part 1 & Part 2</i> , LEGAL SOLUTIONS BLOG (THOMSON REUTERS) (Aug. 25, 2015). |
| 2. Whether you have systems in place to handle the electronic data involved in the matters you accept? | | | | Stacey Blaustein et al., Digital Direction for the Analog Attorney-Data Protection, E-Discovery, and the Ethics of Technological Competence in Today's World of Tomorrow , 22 RICH. J.L. & TECH. 10 (2016). |
| 3. If you lack the requisite infrastructure to handle a matter, whether you could contract with or retain other lawyers who have adequate infrastructure? | | | | Ellie Margolis, Surfin' Safari—Why Competent Lawyers Should Research on the Web , 10 YALE J.L. & TECH. 82 (2007). |
| <u>Advice</u> | | | | |
| 1. Whether you have a relationship with at least one other lawyer whom you could consult for advice about or assistance with substance, procedure, or questions of judgment if needed? | | | Without a colleague or mentor who can act as a sounding board or offer a different perspective, a lawyer may fall prey to poor judgment and echo-chamber thinking. | For more guidance on the ethical issues that may arise with a mentor relationship, particularly confidentiality concerns, see Iowa Ethics Op. 13-04 (Aug. 27, 2013). |
| 2. Whether you receive regular, honest, and relevant feedback on your work product? | | | | |
| <u>Willingness</u> | | | | |
| 1. Whether the cases are sufficiently interesting to develop the factual bases and legal theories? | | | A lack of interest in the facts of a particular case or in an unfamiliar area of law can quickly lead to issues related to both competence and diligence. <i>See Iowa Supreme Ct. Att’y Disciplinary Bd. v. Marks</i> , 831 N.W.2d 194, 198–99 (Iowa 2013) (finding violation of rules 32:1.1 and 1.3 when attorney acknowledged he was not competent to handle probate matters and further testified he found a particular probate matter “‘unpleasant,’ and that he faced ‘some sort of mental block’ that prevented him from completing his responsibilities”). | |
| 2. Whether you are hindered in providing competent representation by your personal circumstances, including medical issues, or your personal feelings about the client or the matter? | | | | |
| 3. Whether the representation creates any peer pressure or image issues with which you are not able to reasonably cope? | | | | |
| 4. If you lack the willingness to take a case, whether it would be prudent to refer the matter to a lawyer with the requisite skill set and interest to handle the matter? | | | | |
| 5. If you lack the willingness to take a case, what form and substance the communication(s) declining the case should take? | | | | |

II. COMMUNICATION

Iowa Rule of Professional Conduct 32:1.4 addresses a lawyer's duty to communicate with the client. Lawyers must keep the client reasonably informed about matters related to the representation. The duty of communication requires the lawyer to reasonably consult with the client about the client's objectives and the means to accomplish those objectives, to promptly comply with reasonable requests for information, and to sufficiently explain matters to allow the client to make informed decisions regarding the representation. Regular and clear communication with the client are essential. Lawyers should discuss communication expectations with clients when accepting new matters. Written policies establishing minimum communication standards for the lawyer, the staff, and the client can assist with expectation management and help prevent client misunderstandings.

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|---|--|
| When taking on new matters, do you discuss communication expectations with the client? | | | | |
| Do you address: | | | | |
| 1. The appropriate and preferred methods of communication, such as phone, mail, email, and text message? | | | Regular communication initiated by the lawyer reduces the need for the client to request information but does not eliminate the lawyer's obligation to promptly comply with reasonable requests for information. IRPC 32:1.4(a)(3), (4) & cmt. 4 ; <i>Iowa Supreme Ct. Att'y Disciplinary Bd. v. Johnson</i> , 792 N.W.2d 674, 680 (Iowa 2010) (finding lawyer failed to keep client reasonably informed when did not return client telephone calls). | IOWA SUP. CT. ATT'Y DISCIPLINARY BD., CHOOSING AND WORKING WITH A LAWYER . Mark Bassingthwaighe, Manage Client Relationships in Addition to Client Matters , ALPS BLOG (Jan. 16, 2012). |
| 2. The expected response time for client-initiated phone calls, emails, or text messages? | | | | |
| 3. The expected timing for relaying changes or status updates to clients? | | | | |
| 4. The expected frequency of lawyer-initiated updates on the case when there is no activity? | | | | |
| 5. The expected frequency and form of fee or expense updates to clients? | | | | |
| 6. The appropriate and preferred methods of ensuring client receipt of important correspondence and other documents? | | | Confirming client instructions in writing can reduce client confusion and frustration. IRPC 32:1.2, 1.4 . | Dean R. Dietrich, Handling Clients' Text Messages , WIS. LAW., Apr. 2016. |
| 7. The appropriate and preferred methods of addressing language barriers, if any exist? | | | For more guidance on the appropriate extent and nature of explanation concerning the status of a matter, see IRPC 32:1.4 cmts. 5-6, 1.14 . | Dean R. Dietrich, Ethics: Lawyers Owe Clients 'Reasonable' Communication , WIS. LAW., June 2011. |
| 8. Whether the client wishes to designate someone else with whom you can communicate on their behalf about the matter? | | | For more guidance on the required notice regarding any trust account withdrawal for earned fees or expenses, see IA Ct. R. 45.7 . | Jonathan J. Walsh & Benjamin C. Woodruff, The Perils and Pitfalls of Emailing and How to Avoid Them , AM. BAR ASS'N (July 12, 2017). |
| 9. Your own communication needs from the client during the course of the representation, including the expected timing and nature of client responses to contacts initiated by you or your staff? | | | If the client grants permission to communicate with someone else on their behalf, additional concerns related to confidentiality may arise. See IRPC 32:1.6 . Clients need to fully understand their obligations, including providing truthful and timely responses and keeping contact information up to date. | Tom Kulik, To Text, or Not to Text, Clients: An Ethical Question for a Technological Time , Above the Law (Feb. 11, 2019). |

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|--|---|
| Do you utilize standard engagement and disengagement letters? | | | | |
| Does your engagement letter include: | | | <p>It is essential both client and lawyer understand the terms of representation and fees for services.</p> <p>IRPC 32:1.5(b) requires lawyers to provide clients with a “basis or rate of the fee and expenses” within a reasonable time of beginning the representation.</p> <p>A closing letter prevents confusion as to whether the lawyer still represents the client if there is subsequent litigation.</p> <p>For more guidance on mandatory and permissive disengagement, see IRPC 32:1.16.</p> <p>The client is the owner of the contents of his or her file. <i>See Iowa Supreme Ct. Att’y Disciplinary Bd. v. Gottschalk</i>, 729 N.W.2d 812, 819–20 (Iowa 2007).</p> | <p>Charles E. Mortimer, Know When to Hold ‘Em, Know When to Fold ‘Em, COLO. OFF. OF ATT’Y REG. COUNSEL (2014).</p> <p>Mark Bassingthwaighe, Why the Use of an Engagement Letter Should Never Be Optional, ALPS BLOG (Feb. 3, 2015).</p> <p>Joshua Maggard, Engage(ment Letters) with Your Clients, AM. BAR ASS’N (May 19, 2017).</p> <p>CNA PROF’L COUNSEL, LAWYERS’ TOOLKIT 4.0: A GUIDE TO MANAGING THE ATTORNEY-CLIENT RELATIONSHIP, (2018) (sample engagement and closing letters).</p> |
| 1. The terms and scope of the representation? | | | | |
| 2. Billing policies? | | | | |
| 3. The services covered by the representation? | | | | |
| 4. How and when the relationship will be terminated? | | | | |
| 5. A disclaimer that no specific outcome is guaranteed? | | | | |
| Does your disengagement letter address: | | | | |
| 1. The reason(s) for the disengagement? | | | | |
| 2. Any additional obligations of the client or other actions necessary to protect the client’s interests? | | | | |
| 3. The return of client documents? | | | | |
| 4. The transfer/return of the entire client file? | | | | |
| Do you have internal policies and procedures in place regarding client communication? | | | | |
| Do your policies address: | | | <p>The following may help ensure compliance with a communications policy: (1) requiring staff to read and sign the policy, (2) periodically reviewing the policy with staff, and (3) assessing compliance as part of performance reviews.</p> <p>The use of texting to communicate with clients has become more common but can also create challenges. Some mobile phone companies retain texts for only a short period of time. Accordingly, it is important to independently document or retain text communications.</p> <p>Client surveys and interviews allow lawyers to identify what is working well for clients and what is not. Addressing client complaints improves attorney-client relations and may avoid professional responsibility or liability complaints. <i>See also IRPC 32:8.4(g)</i>.</p> | <p>Mark Bassingthwaighe, If You Failed to Document It, It Never Happened, ALPS BLOG (Jan. 18, 2017).</p> <p>Best Practices: Solicit and Respond to Client Feedback, FINDLAW (THOMSON REUTERS) (2019).</p> <p>Lynn Luong, Law Firm Client Relations: How to Get Client Feedback That You Can Use, ABOVE THE LAW (Nov. 9, 2016).</p> |
| 1. Initial and continued compliance by all staff with communication expectations? | | | | |
| 2. Documentation and retention of any text or phone-based client communications? | | | | |
| 3. Retention of email conversations with clients? | | | | |
| 4. In the event a client refuses to follow your advice, documentation of your recommendations that the client refused to follow, the reason(s) you made the recommendations, and your explanation to the client of the risks of not following the advice? | | | | |
| Do you assess: | | | | |
| 1. Whether you and other staff members comply with communication expectations? | | | | |
| 2. Whether all communications with clients are respectful of clients and their needs? | | | | |
| 3. Whether clients are satisfied with the representation? | | | | |

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|---|--|
| Do you advertise your services? | | | | |
| Do you assess: 1. Whether the advertisements, including any office website, are free of any false or misleading statements? | | | Both untruthful statements and truthful statements that are misleading are prohibited. See IRPC 32:7.1 cmt. 2. | BETTER BUSINESS BUREAU, CODE OF ADVERTISING (2019). |
| 2. Whether the advertisements contain any statements that are likely to create an unjustified expectation of a particular result? | | | The inclusion of a disclaimer or other qualifying language may prevent a finding a statement is misleading or creates an unjustified expectation. IRPC 32:7.1 cmt. 3. | Gregory C. Sisk & Ellen L. Yee, Lawyer Advertising in Iowa After 2012 , 62 DRAKE L. REV. 549 (2014). |

III. CONFIDENTIALITY

Iowa Rule of Professional Conduct 32:1.6 addresses the confidentiality of client information and the circumstances under which disclosure is prohibited, permitted, and required. Confidentiality applies not only to matters communicated in confidence by the client but to all information relating to the representation. A lawyer may not disclose information relating to the representation of a client except as authorized or required by the Rules. Many issues regarding disclosure of confidential information are preventable, and written policies can aid in preventing such disclosures.

| Question | Yes | No | Ethical Implications | Additional Resources |
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| When taking on new matters, do you discuss the issue of confidentiality with the client? | | | | |
| Do you address: 1. The meaning and scope of the lawyer's duty to maintain client confidences and the circumstances under which disclosure relating to the representation is prohibited, permitted, or required? | | | Lawyers within a firm may disclose to each other information relating to a client unless the client has instructed that certain information be confined to specified lawyers. IRPC 32:1.6 cmt. 5 . | ABA Comm'n on Ethics & Prof'l Resp., Formal Op. 477R (2017) (securing communication of protected client information) |
| 2. (If you work in a law firm) Disclosure of information about the representation to other lawyers and staff at the firm? | | | When a communication includes information related to representation of a client, the lawyer must take reasonable steps to prevent it from coming into the hands of unintended recipients. Special security measures are not required if the method of communication affords a reasonable expectation of privacy. Factors to be considered in determining the reasonableness of the expectation of privacy include: (1) the sensitivity of the information and (2) the extent to which privacy of the communication is protected by law or agreement. IRPC 32:1.6 cmt 19 . | Robert A. Barrer, Ethical Implications & Best Practices for Use of Email , N.Y. LEGAL ETHICS REP., Mar. 2015. |
| 3. The potential risks of email and text-message communication? | | | Security measures such as email encryption and secure online client portals help ensure the protection of client confidences. | Holly Urban, Prioritizing Cybersecurity to Protect Client Information from Data Breaches , L. TECH. TODAY (Jan. 3, 2019). Iowa Ethics Op. 15-01 (Jan. 28, 2015) (obligation to warn client about risk of interception of email) |
| Do you have internal policies and procedures in place regarding preservation of client confidences? | | | | |
| Do you address: 1. Initial and continued compliance by all staff with policies regarding client confidences? | | | The following may help ensure compliance with a confidentiality policy: (1) requiring staff to read and sign the policy and (2) periodically reviewing the policy with staff. | Mark Hansen, How Was Work Today, Dear? , ABA J. (Oct. 29, 2005). |
| 2. Initial and continued compliance by all outside vendors with confidentiality requirements? | | | Rule 32:1.6 prohibits both disclosures relating to the representation of a client <u>and</u> disclosures that may not in | Grace M. Giesel, The Duty of Confidentiality & the Attorney-Client Privilege: Sorting Out the Concepts , |

| Question | Yes | No | Ethical Implications | Additional Resources |
|--|-----|----|---|---|
| | | | <p>themselves reveal protected information but could reasonably lead to the discovery of such information. It contains no exceptions for disclosures to family members, friends, or significant others. IRPC 32:1.6 cmt. 4.</p> <p>Although discussing “hypotheticals” with another lawyer is permitted, lawyers should take care to omit any information that would allow the listener to be able to ascertain the identity of the client or situation involved. IRPC 32:1.6 cmt. 4.</p> <p>Outside vendors, such as cleaning staff, contract staff, and IT staff, may come into contact with confidential information as part of their services. Lawyers should consider confidentiality agreements with these vendors.</p> | <p>KY. BAR ASS’N BENCH & BAR, Jan. 2015.</p> <p>Mark Bassingthwaighe, Do Your Risk Management Efforts Ever Focus on Support Staff, ALPS BLOG (Feb. 13, 2013).</p> |
| <p>Do you address: <u>Client Management</u></p> <p>1. The appropriate time and manner to obtain client consent for disclosure of information relating to representation?</p> | | | <p>Rule 32:1.6(a) allows a lawyer to reveal information relating to the representation of a client if, <i>inter alia</i>, the client gives informed consent.</p> | <p>David Hudson, When Withdrawing Over a Client’s Failure to Pay, What Do You Say to Protect Confidentiality?, ABA J. (Dec. 19, 2016).</p> |
| <p>2. Protection of client confidences in a motion to withdraw?</p> | | | <p>Lawyers may want to memorialize a client’s consent to disclosure so that both parties are clear as to the scope of authorization and when it was made.</p> <p>A motion to withdraw that discusses the reason for the lawyer’s request to withdraw should be carefully drafted to avoid violation of IRPC 32:1.6. See also IRPC 32:1.16 & cmt. 3.</p> | |
| <p><u>Building & File Security</u></p> <p>1. Practices and precautionary measures, in consideration of the office layout, to eliminate public access and visibility of client files and office computer monitors?</p> | | | <p>Rule 32:1.6(c) requires lawyers to competently safeguard client information against unauthorized access. See also IRPC 1.6 cmt. 18.</p> <p>Electronic record storage has become increasingly common in the past several years, but along with it has come increased risks of security breaches. Measures such as password protection, anti-virus software, two-factor authentication, VPNs, and firewalls all help ensure the protection of client confidences.</p> | <p>Mark Bassingthwaighe, Why Be Concerned About Law Firm Housekeeping Apathy?, ALPS BLOG (May 13, 2014).</p> |
| <p>2. The appropriate locations within the office for confidential discussions?</p> | | | | <p>Kathryn A. Thompson, Keeping Your Office Sharing Arrangements with Other Lawyers Squeaky Clean Under the Ethics Rules, ABA CTR. FOR PROF’L RESP., May 2007.</p> |
| <p>3. (If you share space with another practitioner/firm) Segregation of files and other confidential client information?</p> | | | | <p>ABA Comm’n on Ethics & Prof’l Resp., Formal Op. 483 (2018) (discussing</p> |
| <p>4. The security of the office building (such as who has keys to the office, who is responsible for locking the office at night, and who has off-hours access)?</p> | | | | |

| Question | Yes | No | Ethical Implications | Additional Resources |
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| 5. The security of the file storage (whether onsite or offsite)? | | | | lawyers' obligations after an electronic data breach or cyberattack) |
| 6. The security of file destruction procedures? | | | | |
| <u>Inadvertent Disclosures</u> | | | <p>An inadvertent disclosure of information relating to the representation of a client does not necessarily constitute a violation of rule 32:1.6. However, lawyers are required to make reasonable efforts to prevent unauthorized access or inadvertent disclosure. IRPC 1.6 cmt. 18.</p> <p>A lawyer who receives a document or electronically stored information from a third party, including opposing counsel, that the lawyer knows or reasonably should know was inadvertently sent is required to promptly notify the sender. IRPC 32:4.4(b).</p> | <p>David L. Hudson Jr., Redacting Confidential Client Information: The Devil Is in the Details, ABA J. (July 1, 2019).</p> <p>Iowa Ethics Op. 15-02 (Jan. 28, 2015) (duties of lawyer upon receipt of inadvertent disclosure or wrongfully obtained information)</p> |
| 1. Practices to avoid inadvertent disclosure of confidential information? | | | | |
| 2. The appropriate procedures following a notification of an inadvertent disclosure (such as notification to the client)? | | | | |
| <u>Websites and Social Media</u> | | | <p>A lawyer should take care before posting information online about a client. The duty of confidentiality extends to information related to a representation, even if others may be aware of or have access to that knowledge. See IRPC 1.6(a); <i>Iowa Supreme Ct. Att'y Disciplinary Bd. v. Marzen</i>, 779 N.W.2d 757, 766 (Iowa 2010) ("[T]he rule of confidentiality must apply to <i>all</i> communication between the lawyer and client, even if the information is otherwise available.").</p> | <p>Nick Graf, Social Media Risks for Lawyers, CNA (Sept. 8, 2016).</p> <p>ABA Comm'n on Ethics & Prof'l Resp., Formal Op. 480 (2018) (discussing confidentiality obligations for lawyer blogging and other public commentary).</p> <p>Mark Bassingthwaite, My Former Client Posted What???, ALPS BLOG (Jan. 3, 2018).</p> |
| 1. The nature and scope of information that should be posted as it relates to your practice? | | | | |
| 2. If posting information relating to the representation of a particular current or former client, the need for client authorization? | | | | |
| 3. Practices to avoid disclosure of confidential information in online content and updates? | | | | |

IV. CONFLICTS OF INTEREST

Iowa Rules of Professional Conduct 32:1.7, 1.8, 1.9, 1.10, 1.11, and 1.18 address conflicts of interest that may arise with prospective, current, and former clients, including the circumstances under which a lawyer may represent a client despite the existence of a conflict. It is essential for lawyers to maintain both loyalty to the client and independence in judgment. A lawyer may not represent a client if the representation involves a personal or professional conflict of interest except as authorized by the Rules. Regular maintenance and consultation of a conflict-of-interest database can help lawyers identify potential conflicts as they arise and prevent issues that may result from a failure to properly identify and remedy a conflict of interest, such as disqualification from litigation, fee forfeiture, malpractice liability, and disciplinary proceedings.

| Question | Yes | No | Ethical Implications | Additional Resources |
|--|-----|----|---|---|
| Do you have a process/system by which you identify conflicts? | | | | |
| Does your process/system identify: | | | <p>For additional guidance on resolution of a conflict of interest, see IRPC 32:1.7 cmts. 2-4.</p> <p>Lawyers with managerial authority within a firm are required to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance all lawyers in the firm will conform to the Rules. IRPC 32:5.1(a) & cmt. 2.</p> <p>For additional guidance on ethical issues that arise with organizational clients, see IRPC 32:1.7 cmts. 34-35 and 32:1.13.</p> <p>A thorough conflict detection system includes both lawyer and staff review. IRPC 32:1.7 cmts. 4-5.</p> <p>Engagement and disengagement letters can clarify whether an attorney-client relationship exists and assist with identification of potential conflicts with current and former clients.</p> <p>Ignorance caused by a failure to institute reasonable conflict-check procedures does not excuse a violation of the conflict-of-interest rules. IRPC 32:1.7 cmt. 3.</p> <p>For additional guidance on imputation of conflict of interest and the appropriate use of screening, see IRPC 32:1.0 cmts. 8-10, 32:1.10, 32:1.11.</p> | <p>Iowa Ethics Op. 18-01 (Dec. 21, 2018) (a “best practice” systems-approach to client selection, avoidance of conflict of interest, and case processing).</p> <p>Iowa Ethics Op. 17-01 (Apr. 28, 2017) (when lawyers change law firms: guidelines for lawyers, their existing law firms, and potential future law firms)</p> <p>Mark Bassingthwaighe, Watch Out for These Common Attorney Conflict of Interest Traps, ALPS BLOG (Mar. 3, 2015).</p> <p>Josh Camson, How to Do a Law Firm Conflicts Check, LAWYERIST (Oct. 14, 2019).</p> <p>Mark Bassingthwaighe, Don't Kiss Off the Importance of Closure Letters, ALPS BLOG (Jan. 26, 2015).</p> |
| 1. Names of clients & matters? | | | | |
| 2. Names of adverse parties? | | | | |
| 3. Names of related parties (such as witnesses, experts, insurance carriers, family members, co-counsel, opposing counsel, related entities, owners of business entities)? | | | | |
| 4. Names of potential/rejected clients & matters? | | | | |
| 5. Dates matters were active/closed/rejected? | | | | |
| 6. Names of lawyers and staff who worked on particular matters? | | | | |
| Do you have internal procedures in place that address: | | | | |
| 1. Initial and continued compliance by all staff with expectations regarding use of the conflicts process/system when a prospective matter arise? | | | | |
| 2. Maintenance of the conflicts process/system? | | | | |
| 3. Use of engagement and disengagement letters? | | | | |
| 4. (If you work in a firm) Screening measures for members of the firm that are disqualified from certain matters? | | | | |

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|---|---|
| Before taking on new matters, do you consider whether a conflict of interest may exist? | | | | |
| Do you assess whether the potential representation: 1. Would be adverse to a current client, even if the matters are unrelated? 2. Would be adverse to a former client in a substantially related matter? 3. Would involve representing multiple clients in a single matter? 4. Would be adverse to a prospective client not engaged by you or your firm in the same or a substantially related matter? 5. Would be limited by your own personal interests? 6. Would be limited by your responsibilities to a third party, including insurance carriers? 7. Would be limited by a positional conflict? 8. Would likely require you to be a necessary witness in the matter? 9. Would involve a lawyer you are or have been affiliated with, such as a former employer or a lawyer with whom you share an office? 10. (If you work in a firm) May involve an imputed disqualification based upon the conflict of a co-worker? | | | <p>Lawyers are prohibited from undertaking representation directly adverse to a current client without each affected client's informed consent, even if one or more of the matters are transactional. IRPC 32:1.7 cmts. 6–7. For additional guidance on the duties to former clients, see IRPC 32:1.9. For additional guidance on the duties to prospective clients, see IRPC 32:1.18.</p> <p>For additional guidance on the issues that may arise with common representation, see IRPC 32:1.7 cmts. 29–33 and 32:1.8 cmt 13.</p> <p>“The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment” IRPC 1.7 cmt. 8.</p> <p>Generally, a lawyer may take inconsistent legal positions in different tribunals on behalf of different clients, but a conflict arises if there is a significant risk the lawyer's action on behalf of one client will materially limit their effectiveness in representing another client in a different case. IRPC 32:1.7 cmt. 24.</p> | <p>Hal R. Lieberman, <i>Working Knowledge of Conflict of Interest Rules Is Essential</i>, N.Y. L. J. (Sept. 27, 2004).</p> <p>Mark Bassingthwaight, <i>You Don't Get It Both Ways—the Downside of Joint Representation</i>, VA. LAW., Oct. 2015, at 51.</p> <p>ABA Comm'n on Ethics & Prof'l Resp., Formal Op. 340 (1974) (“No disciplinary rule expressly requires a lawyer to decline employment if a . . . close relative represents the opposing party. . . . We cannot assume that a lawyer who is married to another lawyer necessarily will violate any particular disciplinary rule.”).</p> |
| If you determine a conflict of interest may exist, do you consider whether the conflict or potential conflict is consentable? | | | | |
| Do you assess: 1. Whether the representation is of two clients on opposing sides in a litigation matter? 2. Whether the representation is prohibited by law? 3. Whether the representation is of criminal co-defendants? (<i>usually</i>) 4. Whether the representation is of both parties in dissolution of marriage proceedings? | | | <p>See IRPC 32:1.7(b)–(c).</p> <p>To sufficiently assess the nature of a conflict of interest, lawyers need to resist the natural desire to accept new work and to minimize conflicts and instead seriously consider the consequences that may arise due to a conflict.</p> | <p>16 IOWA PRACTICE SERIES, LAWYER & JUDICIAL ETHICS § 5:7(d)(3) (2019) (materially-limited representation conflicts of interest—representing multiple clients in criminal matter)</p> |

| Question | Yes | No | Ethical Implications | Additional Resources |
|--|-----|----|--|--|
| 5. (If not explicitly non-consentable under rule 32:1.7(b) or (c)) Whether you will be able to provide competent and diligent representation to each affected client? | | | "Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest." IRPC 32:1.7 cmt 15. | |
| If you determine a consentable conflict of interest exists, do you obtain informed consent, in writing, from each affected client? | | | | |
| Do you obtain consent from each affected client to disclose information related to the representation necessary to permit each client to make an informed decision about the conflict of interest? | | | <p>"Informed consent" is "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." IRPC 32:1.0(e); <i>see also</i> IRPC 32:1.7 cmts. 18–19.</p> <p>Informed consent must be confirmed in writing. IRPC 32:1.7(b)(4).</p> | ABA Comm'n on Ethics & Prof'l Resp., Formal Op. 05-436 (2005) (informed consent to future conflicts of interest). |
| Do you ensure that you have provided each affected client with: 1. Adequate information and explanation about the material risks of the proposed course of conduct? 2. Reasonably available alternatives to the proposed course of conduct? | | | <p>The extent of the explanation required will depend upon the nature of the conflict and the legal experience of the client. Regardless, a general or open-ended consent is unlikely to suffice. IRPC 32:1.7 cmt. 22.</p> <p>Lawyers undertaking common representation should explain the effect on the attorney-client privilege and confidentiality of client information. IRPC 32:1.7 cmts. 29–33.</p> | Mark Scruggs, How to Write a Good (and Ethical) Conflict of Interest Waiver , LAW. MUTUAL (Apr. 3, 2018). |
| Do you continue to assess potential conflicts as the representation progresses? | | | | |
| Do you reassess potential conflicts when: | | | | |
| 1. New parties are added to a matter? | | | <p>If a new conflict arises after representation has been undertaken, the lawyer generally must withdraw unless the conflict is consentable and informed consent is obtained. IRPC 32:1.7 cmts. 4–5.</p> | ABA Comm'n on Ethics & Prof'l Resp., Formal Op. 08-450 (2008) (conflict of interest when must reveal confidential information relating to one client in order to effectively represent another client) |
| 2. New counsel appear in a matter? | | | | |
| 3. New witnesses are discovered? | | | | |
| 4. Interests of clients diverge? | | | | |
| 5. Changes in your own life occur, whether financial or personal? | | | | |
| If you determine a conflict of interest has arisen, do you consider whether the conflict is consentable? | | | <p>It may be necessary to seek court approval before withdrawal. <i>See</i> IRPC 32:1.16.</p> | |
| If you determine the conflict is consentable, do you obtain informed consent, in writing, from each affected client? | | | | |
| If the new conflict is not consentable or consent cannot be obtained, do you take steps to withdraw? | | | | |

V. RECORDS MANAGEMENT

Organization, management, and security of client files directly impact a lawyer's efficiency and ability to obtain optimal results for clients. Effective records management is essential to a lawyer's ability to comply with the Rules of Professional Conduct from adequately preparing for trial (Rule 32:1.1) to timely responding to client inquiries (Rule 32:1.4). Moreover, files often contain confidential client information (Rule 32:1.6), critical records (Rule 32:1.15), and client-lawyer communications about the objectives of the representation (Rule 32:1.2). Lawyers should thoughtfully consider best practices for file management, security, and retention to avoid the ethical issues that often arise from poor recordkeeping.

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|--|---|
| Do you have a standardized filing system in place for all client files? | | | | |
| Do you address: | | | | |
| 1. File-naming conventions for both electronic and paper files? | | | <p>"A lawyer's management of her records must protect the client's interests . . . must protect the client's confidences and secrets, and must be governed by the lawyer's professional judgment . . ." GEORGE C. CUNNINGHAM & JOHN C. MONTANA, <i>THE LAWYER'S GUIDE TO RECORDS MANAGEMENT AND RETENTION</i> 39 (2006).</p> | <p>IOWA ST. BAR ASS'N, CLIENT FILE RETENTION GUIDE.</p> <p>Iowa Ethics Op. 08-02 (Mar. 4, 2008) (File storage and retention policy).</p> <p>Top 5 Reasons a Document Management Program Is Critical to Law Practice, FINDLAW (Feb. 10, 2017).</p> |
| 2. Consistency between electronic and paper copies of files? | | | | |
| 3. Retention of all email and text communications with clients? | | | | |
| 4. Appropriate safeguarding of client original documents? | | | | |
| 5. Record retention in accordance with IRPC 32:1.15 and any other applicable law? | | | <p>Failure to implement a well-defined and well-executed structure for naming files, may cause the loss of important client information.</p> <p>Lawyers must hold the property of others with the care required of a professional fiduciary. Some property, like securities, should be kept in a safe deposit box. IRPC 32:1.15 cmt. 1.</p> <p>A policy may help ensure the eventual return of original documents to the client.</p> <p>The Iowa Rules of Professional Conduct do not prescribe a minimum period of time for retention of client files. However, lawyers are required to maintain complete records of account funds and other property for at least six years after termination of the representation. IRPC 32:1.15.</p> | <p>Sam Glover, How to Organize Paperless Law Firm Files, LAWYERIST (Oct. 16, 2019).</p> <p>Beverly Michaelis, Documenting Email as Part of a Client's File, Part I, OR. ST. BAR BULL., Apr. 2013.</p> |

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|---|---|
| Do you have internal policies and procedures in place to ensure the security of client files? | | | | |
| Do you assess: 1. Whether you have the time and expertise to oversee technology, including cyber-security, in order to properly maintain files and, if you do not have the time and expertise, whether you have employed or contracted with someone to assist you with this task? | | | <p>"It is the responsibility of the lawyer delivering legal services online—not the hosting company, the software provider . . . or any other entity—to ensure that . . . the practice complies with the high ethical standards required by the lawyer's law license."</p> <p>STEPHANIE L. KIMBRO, VIRTUAL LAW PRACTICE: HOW TO DELIVER LEGAL SERVICES ONLINE 133 (2010).</p> | <p>Kendra Albert, Computer Security Tools & Concepts for Lawyers, 20 GREEN BAG 2D 127 (2017).</p> |
| 2. Initial and continued compliance by all staff with respect to all security policies? | | | <p>If you do not have a designated technology compliance officer, you may want to consider hiring or contracting with someone to assist with this task.</p> <p>The following may help ensure compliance with a security policy: (1) requiring staff to read and sign the policy, (2) periodically reviewing the policy with staff, and (3) assessing compliance as part of performance reviews.</p> | <p>Mary Ellen Egan, Cyberthreats 101: The Biggest Computer Crime Risks Lawyers Face, ABA J. (Mar. 1, 2018).</p> |
| <u>Building and File Security</u> Do you address: 1. Parameters regarding file access by members of your staff? | | | Tracking or limiting access to sensitive documents may help protect client confidentiality. | <p>ABA Comm'n on Ethics & Prof'l Resp., Formal Op. 477R (2017) (securing communication of protected client information).</p> |
| 2. The security of your physical file-storage system? | | | Utilizing lockable file cabinets or storage rooms are simple ways to help ensure the security of physical client files. | CHRISTOPHER ANDERSON & DAN BARAHONA, WHEN "SECURE ENOUGH" ISN'T ENOUGH: A LAW FIRM GUIDE TO PROTECTING THE CONFIDENTIALITY OF SHARED CLIENT FILES (2013). |
| 3. Whether client files and other documents are adequately protected from catastrophic events? | | | Water and fireproof safes or storage can help safeguard documents despite a catastrophic event. | |
| 4. Measures to guarantee the regular back-up of data? | | | | |
| 5. The appropriate procedures to ensure secure transmission of medical records, financial records, or other highly confidential materials? | | | <p>Consistent data back-up is essential to avoiding losing files after a cyber-security breach or technological malfunction.</p> <p>Security measures such as email encryption and secure online client portals help ensure the protection of client confidences. <i>See also</i> IRPC 32:1.6 cmt 19.</p> | <p>Holly Urban, Prioritizing Cybersecurity to Protect Client Information from Data Breaches, L. TECH. TODAY (Jan. 3, 2019).</p> |
| <u>Network/Hardware Security</u> Do you address: 1. Physical security protection for the computer hardware used in the operation of your firm's network? | | | Secure hardware reduces the chance that confidential information stored or accessed electronically will be compromised. <i>See also</i> IRPC 32:1.6(d) & cmt 19 . | <p>Iowa Ethics Op. 14-01 (Mar. 10, 2014) (computer security).</p> <p>ABA Comm'n on Ethics & Prof'l Resp., Formal Op. 06-</p> |

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|--|--|
| 2. Procedures to ensure regular updates to software, including updating patches and antivirus software? | | | Client information and files stored electronically receive better protection from viruses and potential cybersecurity breaches through regular software updates. | 442 (2006) (review and use of metadata). |
| 3. The security of your firm's internet access? | | | | ABA Comm'n on Ethics & Prof'l Resp., Formal Op. 483 (2018) (data breach or cyberattack). |
| 4. (If you use a smart phone or other portable digital devices in your practice) The security of information stored on or accessible through smart phones or other digital devices? | | | | Pem Guerry, Why Remote Security Is a Must , L. TECH. TODAY (Jan. 12, 2017). |
| 5. The appropriate procedures following a security or cyber-security breach? | | | Using a wireless computer network or an "open" network to do business increases the risk of inadvertent disclosure of client information. Allowing guests to freely use your firm's internal wi-fi network could also compromise client confidences. Periodic testing, such as conducting vulnerability assessments, may help identify cyber security procedures that need improvement. | Sherri Davidoff, Law Firm Cybersecurity Audits: Getting to Good , L. PRACTICE TODAY, Feb. 12, 2016. |
| <u>Cloud Services</u> Do you consider: 1. Where the cloud servers reside and how the laws of that jurisdiction may impact confidentiality of the information stored on the servers? | | | Security protections such as data encryption and allowing only the firm to have control of the encryption key help ensure the protection of client confidences. See also IRPC 32:1.6 cmt 19 . | Iowa Ethics Op. 11-01 (Sept. 9, 2011) (cloud computing) |
| 2. Whether and how the contract with the cloud provider addresses confidentiality? | | | | Jason Tashea, Lawyers Have an Ethical Duty to Safeguard Confidential Information in the Cloud , ABA J., Apr. 1, 2018. |
| 3. Whether the cloud service has regular and adequate data backup policies? | | | | Sharon Nelson & John Simek, Selecting a Law Firm Cloud Provider , MICH. BAR J., Mar. 2014. |
| Do you address: 1. The potential confidentiality risks associated with cloud services and do you obtain client consent to cloud file storage? | | | | Heidi Alexander, How to Vet Cloud Technology Providers , MASS. L. OFF. MGMT. PROGRAM, 2018. |
| <u>Disaster Plan / Continuity of Operations</u> Do you address: 1. Procedures to follow in the event of a catastrophic event? | | | A natural disaster or technological breach presents multi-faceted ethical issues related to both confidentiality (IRPC 32:1.6) and diligence (IRPC 32:1.3). | Iowa Ethics Op. 08-03 (June 18, 2008) (Damage file disposition). |
| 2. Continuity of operations in the event of a natural disaster or security breach? | | | | ABA Comm'n on Ethics & Prof'l Resp., Formal Op. 482 (2018) (ethical obligations related to disasters) ABA SPECIAL COMM. ON DISASTER RESPONSE & PREPAREDNESS, SURVIVING A DISASTER: A LAWYER'S GUIDE TO DISASTER PLANNING (2011). Jeff Norris & Greg Inge, Rethink Your Law Firm's IT Disaster Recovery Strategy , ABA J., Oct. 30, 2018. |

VI. STAFF & OFFICE MANAGEMENT

Responsible office and staff management are essential to an effective law practice. It not only promotes client satisfaction but helps guarantee compliance with the Rules of Professional Conduct from maintaining adequate supervision over subordinate lawyers and nonlawyers (IRPC 32:5.1–5.5) to ensuring competent and diligent representation (IRPC 32:1.1 and 32:1.3) through client selection and risk management. Written policies and procedures can help the firm address concerns promptly and effectively before they cause larger issues.

| Question | Yes | No | Ethical Implications | Additional Resources |
|--|-----|----|--|---|
| Firm Structure | | | | |
| If you are a sole practitioner | | | | |
| Do you practice through an entity (e.g., a professional corporation or a single-member professional limited liability company)? | | | Managing risk by anticipating problems and reducing mistakes helps ensure profitability. | Starting a Law Firm – Business Entities, IOWA ST. BAR ASS'N. FRANK J. CARROLL & BEVERLY EVANS, BUSINESS ORGANIZATIONS UPDATE. Choose a Business Structure, U.S. SMALL BUS. ADMIN. |
| If not, have you considered the advantages that practicing through an entity can provide, particularly with regard to liability? | | | | |
| If you practice in a firm | | | | |
| Is the structure of the firm memorialized in a written agreement which forms and governs the law firm (e.g., partnership agreement, corporate bylaws, and articles of organization)? | | | Managing risk by anticipating problems and reducing mistakes helps ensure profitability. | Starting a Law Firm – Business Entities, IOWA ST. BAR ASS'N. FRANK J. CARROLL & BEVERLY EVANS, BUSINESS ORGANIZATIONS UPDATE. Choose a Business Structure, U.S. SMALL BUS. ADMIN. |
| Are these governing documents reviewed at least annually by the partners, shareholders, or members? | | | | |
| Do you revise the governing documents to reflect changes in ownership? | | | | |
| Compensation | | | | |
| Is your compensation adequate to give you time apart from practicing law to handle management of risks to the practice? | | | The long-term disadvantages of an unmanaged risk can far outweigh short-term income from fees. For instance, during client intake, the lawyer's desire to increase his or her book of business should be balanced against the best interests of the firm as a whole. IRPC 32:1.5(a) requires fees to be reasonable under the circumstances. Compensation should be structured so that the firm can decline an unsuitable prospective client. | |
| Insurance and Compliance Counsel | | | | |

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|---|--|
| <u>If you are a sole practitioner</u> | | | | |
| Do you have malpractice insurance? | | | Although not required by the IRPC, it is consistent with a lawyer's fiduciary responsibilities to obtain insurance coverage up to the full amount of the possible harm, not including the cost of defense. Security and other risk management policies promote compliance with the IRPC. | AM. BAR ASS'N, Materials for Purchasers of Professional Liability Insurance , July 7, 2016. Alec Rothrock, Check Your Policy: Disciplinary Defense Insurance "Coverage." THE DOCKET, Nov. 23, 2015. |
| Have you put in place the risk management policies required or recommended by the insurer? | | | | |
| Do you have cyber insurance for protection in the event of a cyberattack? | | | | |
| <u>If you practice in a firm</u> | | | | |
| Has the firm appointed one of its lawyers to represent the firm in litigation, obtain malpractice insurance, promote professional responsibility and guide and monitor the implementation of risk management policies ("Compliance Counsel")? | | | Lawyers with managerial authority over the professional work of a firm or with direct supervisory authority over another lawyer must make reasonable efforts to ensure general compliance with the IRPC. IRPC 32:5.1 ; 32:5.3 . | AM. BAR ASS'N, Materials for Purchasers of Professional Liability Insurance , July 7, 2016. |
| Does the firm have cyber insurance for protection in the event of a cyberattack? | | | | |
| <u>Business Manual</u> | | | | |
| Do you or your firm have a manual of risk management policies? | | | The following may help ensure compliance with a written risk management policy: (1) requiring staff to read and sign the policy and (2) periodically reviewing the policy with staff, and (3) assessing compliance as part of performance reviews. | Committees: Ethics & Practice Guidelines , IOWA ST. BAR ASS'N. Law Office Management , LAWYERIST (Oct. 8, 2019). |
| Do you or your firm ensure initial and continued compliance by all staff with risk management policies? | | | | |
| Are staff supported in making reports under these policies? | | | | |
| Does the policy address timely reporting of: | | | Timely reporting of problems is essential to the reduction of risk. The firm's culture should foster an appreciation that each employee owes his or her loyalty to the firm's clients and the firm's reputation, not to an individual who might prefer to hide a mistake. If feasible, allowing reports to be made confidentially may encourage reporting. These areas relate to several of the IRPC, including IRPC 32:1.1 , 32:1.3 , 32:1.4 , 32:1.5(a) , 32:3.4(c) , 32:5.5 , 32:8.1 , and 32:8.3 . | |
| 1. Ethics violations? | | | | |
| 2. Court-ordered sanctions for litigation misconduct? | | | | |
| 3. Regulatory investigations? | | | | |
| 4. Client allegations of malpractice or wrongdoing by firm lawyers or staff? | | | | |
| 5. Billing disputes? | | | | |
| 6. Alcohol, drug, or other employee problems? | | | | |
| 7. Over-charging expenses to clients? | | | | |
| 8. Incompetence? | | | | |
| 9. Unauthorized practice of law? | | | | |
| 10. Harassment? | | | | |
| 11. Any other matters that impede client satisfaction? | | | | |
| <u>Supervision</u> | | | | |

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|---|---|
| Do you or others in your firm conduct performance reviews of staff? | | | Lawyers with managerial authority over the professional work of a firm or with direct supervisory authority over a lawyer must make reasonable efforts to ensure general compliance with the IRPC. IRPC 32:5.1 ; 32:5.3 . Ongoing monitoring and mentoring of employees is also valuable from a business standpoint. Successful lawyering requires proficiency and efficiency. To achieve these goals, managers need employees who perform well. It may be worthwhile to develop a handbook that addresses the professional obligations of all staff. Missed deadlines are one of the most common ethics complaints. | Managing People in a Law Firm , LAWYERIST (Sept. 30, 2019). |
| Do you have procedures in place to ensure that the conduct of your staff conforms to your professional obligations? | | | | |
| Do you regularly review each client matter to check that you and staff have timely performed tasks? | | | | |
| <u>If you practice in a firm</u> | | | | |
| Does the firm have a mentoring program for its associates? | | | A meaningful mentorship can improve attorney performance. | Managing People in a Law Firm , LAWYERIST (Sept. 30, 2019). |
| <u>Hiring</u> | | | | |
| Do you perform due diligence before hiring new staff? | | | In addition to the interview, the hiring authority should thoroughly investigate the applicant’s background, including work and criminal history. | EFFECTIVELY STAFFING YOUR LAW FIRM (Jennifer J. Rose, ed., 2d ed. 2017). |
| <u>Termination of Staff</u> | | | | |
| Do you take steps when a staff member is terminated or leaves the firm to ensure client files remain confidential? | | | If a staff member must be terminated, the priority should be maintaining security and confidentiality. This requires the return of all firm property and removal of all access. It may entail changing passwords. | |
| <u>Accepting New Engagements</u> | | | | |
| Do you undertake due diligence before agreeing to represent new clients or taking on a new matter for an existing client? | | | Due diligence includes assessing your competency and the client’s capacity to pay. | Linda Oligschlaeger, A Few Tips on How to Collect Your Fees , THE MO. BAR (2019). |
| <u>Provision of Law-Related Services</u> | | | | |
| Are you engaged in the provision of law-related services or do you control an organization that provides such services? | | | Lawyers are subject to the IRPC when providing law-related services if those services are provided: (1) by the lawyer in circumstances that are not distinct from the lawyer’s provision of services to clients, or (2) in other circumstances if the lawyer fails to take reasonable measures to ensure a person obtaining the services knows the services are not legal services and the protections of the client-lawyer relationship do not exist. IRPC 32:5.7(a) . | Iowa Ethics Op. 96-08 (Aug. 29, 1996) (lawyer-accountant) |
| If so, do you need to take measures to assure clients that the services are not legal services? | | | | |
| <u>Disengagements</u> | | | | |

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|--|--|
| Do you require that a letter be sent to each client or successor counsel promptly following a file closing? | | | A closing letter helps prevent confusion about the representation in the event of subsequent litigation. It is also an opportunity for a lawyer to end the attorney-client relationship on a positive note. Upon termination of representation, lawyers must take steps to protect a client's interests, including surrendering papers and property to which the client is entitled and refunding any payments that have not been earned. See IRPC 32:1.16(d) . | Miranda K. Mandel, Ethical & Liability Concerns When the Client Relationship Ends , ATT'YS LIAB. ASSURANCE SOC'Y, INC. (2014). CNA PROF'L COUNSEL, LAWYERS' TOOLKIT 4.0: A GUIDE TO MANAGING THE ATTORNEY-CLIENT RELATIONSHIP , (2018) (sample engagement and closing letters). |
| Do you have a standard procedure for returning unearned fees and other client funds to clients? | | | | |
| Do you have a procedure for collecting accounts receivable? | | | | |
| Do you have a standard procedure for notifying the court of your disengagement? | | | | |
| Closing/Succession Planning | | | | |
| Have you identified and authorized a qualified entity or attorney to serve as your designated representative to act in the event of your death or disability? | | | For more guidance on the requirement for death or disability designation and authorization, see Iowa Ct. R. 39:18 . | SUCCESSION PLANNING FOR IOWA LAWYERS , OFF. OF PROF'L REG. (2011). Succession Planning by Iowa Attorneys , IOWA JUD. BRANCH. LATERAL LINK, Mandatory Law Firm Retirement, Succession Planning, and You , ABOVE THE LAW (July 24, 2014). |
| Do you maintain a current list of active clients in a location accessible to your designated representative? | | | | |
| Does your designated representative have knowledge of the location of passwords and other security protocols necessary to access your electronic files and records? | | | | |
| Have you considered a supplemental written plan designating an attorney or entity to perform additional functions in the event of your death or disability? | | | | |
| Do you have written plans for winding down your practice? | | | | |

VII. FINANCIAL MANAGEMENT

Iowa Rule of Professional Conduct 32:1.5(b) requires lawyers to communicate both the scope of representation and the basis/rate of the fee and expenses for which the client will be responsible. A written fee agreement or statement concerning the terms of engagement significantly reduces the possibility of misunderstanding by either the client or the lawyer.

As an engagement progresses, lawyers frequently come into possession of the property of a client or third party, including money. Lawyers have a fiduciary duty to safeguard the property of others. That duty includes keeping funds that belong to clients or third parties separate from the lawyer's own property. Under Iowa Rule of Professional Conduct 32:1.15, lawyers are required to maintain a trust account if they accept fees from clients for work they have not yet performed or for expenses not yet incurred. Lawyers are also required to have a trust account if they receive client settlement funds or hold a third party's funds as part of a legal representation. Proper trust account management is vital to an ethical, professional practice.

The following self-assessment is divided into two sections. The first section consists of considerations related to engagements and fee agreements. The second concerns the management and safekeeping of funds.

PART A: FEES

| Question | Yes | No | Ethical Implications | Additional Resources |
|--|-----|----|--|---|
| When taking on new matters, do you consider and properly identify the client? | | | | |
| <i>If the client is an entity, do you consider:</i> 1. Whether the person with whom you are dealing has the authority to bind the client? | | | For additional guidance on organizations as clients, see IRPC 32:1.13 . | Iowa Ethics Op. 99-01 (Sept. 8, 1999) (propriety of guidelines imposed by insurance company engaging lawyer to represent its insured). Paula M. Bagger, When a Third Party Pays the Legal Fees , AM. BAR ASS'N (May 21, 2019). |
| 2. Whether the client has policies that require in-house approval of your fee agreement? | | | A lawyer may <u>not</u> accept compensation for representing a client from someone other than the client unless: (1) the client gives informed consent; (2) there is no interference with the lawyer's independence or the attorney-client relationship; and (3) information relating to the representation is protected from disclosure to the payer as described in rule 32:1.6. | |
| <i>If someone other than the client is paying your fee, do you obtain:</i> 1. A separate written understanding with the person handling payment? | | | IRPC 32:1.8(f) & cmt. 11-12 . Absent any contrary agreement between all parties, if a third party pays a retainer, any funds left over at the end of the case should be returned to the client. Iowa Ct. R. 45.7(5) . | |
| 2. Informed consent from the client? | | | | |

| Do you utilize a standard engagement letter and/or fee agreement? | | | |
|---|--|--|--|
| Do you address: 1. The scope of the representation? 2. Fees and expenses? 3. <i>If your fees may be recoverable from another party, the client's responsibility for fees?</i> 4. <i>If an IOLTA account is to be employed, that the client will not earn interest on the funds?</i> 5. Timing for the return of the signed fee agreement and whether it is required in order for you to commence work? 6. Whether you require payment from the client before work will begin? 7. Compensation of other lawyers or paralegals who work on the matter? 8. <i>If you are working with a lawyer who is outside your firm, the responsibilities of each lawyer and client consent?</i> 9. The mechanism(s) for the parties to resolve disputes related to the agreement? 10. The circumstances under which you may be forced to ask the court for permission to withdraw, or when you have to do so in a non-litigation matter? 11. The rights you and the client have to withdraw or terminate the relationship based on certain events or conduct, such as non-payment or non-cooperation? 12. Consent to disclose confidential information the client may provide to you when you reasonably believe that such disclosure would assist in achieving a satisfactory result in the case? | | | <p>Generally, scope of representation and the basis/rate of fee and expenses should be communicated to the client, <i>preferably in writing</i>, either before or shortly after commencing representation. An exception exists when the lawyer will charge the same basis/rate to a regularly represented client. IRPC 32:1.5(b).</p> <p>Lawyers must also communicate with the client about any changes in the basis/rate of the fee or expenses. IRPC 32:1.5(b)</p> <p>A written statement reduces the likelihood of misunderstanding, particularly if providing unbundled legal representation. IRPC 32:1.5 cmt. 2. For additional guidance on limiting the scope of representation, see IRPC 1.2(c).</p> <p>For additional guidance on mandatory and permissive withdrawal, see IRPC 32:1.16.</p> <p>Explaining to the client the circumstances in which you may need to disclose confidential information to achieve a satisfactory resolution can help reduce any misunderstanding and dispute in the future. See IRPC 32:1.6 cmt. 5.</p> <p>Marian C. Rice, Engagement Letters: Beginning a Beautiful Relationship, L. PRACTICE MAG., May/June 2013.</p> <p>David L. Hudson, Jr., Sharing Fees with a Lawyer Outside the Firm Is OK as Long as Certain Ethics Rules Are Followed, ABA J., July 1, 2016.</p> <p>ABA Comm'n on Ethics & Prof'l Resp., Formal Op. 02-425 (2002) (retainer agreement requiring the arbitration of fee disputes and malpractice claims)</p> <p>Helen W. Gunnarsson, Avoiding Withdrawal Pains, ILL. BAR J., May 2010.</p> <p>Dean R. Dietrich, Ethics: "Impliedly Authorized" Disclosure of Client Information, WIS. LAW., October 7, 2010.</p> <p>ABA Comm'n on Ethics & Prof'l Resp., Formal Op. 93-379 (1993) (billing for professional fees, disbursements and other expenses)</p> |
| <u>For retainers</u> | | | |
| 1. Do you explain to the client how advance fee payments and special retainers will be held in trust before they are earned? | | | <p>Advance fee payments are payments for contemplated services made to a lawyer before the lawyer has earned the fee. Iowa Ct. R. 45.7(1).</p> <p><i>Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Apland</i>, 577 N.W.2d 50 (Iowa 1998).</p> |
| 2. <i>If you accept payment of retainers by credit card, do you deposit those retainers directly into the client trust account?</i> | | | <p>A special retainer is a fee charged for performance of contemplated services. Nonrefundable special retainers are prohibited, as is the withdrawal of unearned fees. Iowa Ct. R. 45.9. Absent any contrary agreement by the client, the client must be credited with the full</p> <p>Iowa Ethics Op. 03-05 (June 17, 2003) (payment of retainer by credit card).</p> |

| | | | | |
|--|--|--|--|--|
| | | | amount of the retainer. Iowa Ct. R. 45.7(5) . | |
| <u>For flat fee agreements</u> | | | | |
| <i>If you accept flat fee retainers, do you deposit the retainer directly into the client trust account?</i> | | | | |
| Do you specify: 1. The scope of the services you agree to perform for the flat fee? | | | A flat fee is a fee that includes <u>all services</u> a lawyer will perform regardless of the complexity of the work. Iowa Ct. R. 45.10(1) . “A lawyer and client may agree as to when, how, and in what proportion the lawyer may withdraw funds from an advance fee payment of a flat fee. The agreement, however, must reasonably protect the client’s right to a refund of unearned fees if the lawyer fails to complete the services or the client discharges the lawyer. In no event may the lawyer withdraw unearned fees.” Iowa Ct. R. 45.10(3) . | Iowa Ethics Op. 01-02 (Sept. 25, 2001) (advance flat fee payments) |
| 1. The amount to be paid to you and the timing of that payment for the services to be performed? | | | | |
| 2. The amount of the flat fee to be earned if you complete specific tasks or certain events occur before the representation concludes? | | | | |
| 3. The method you will use to calculate the fees you earn if the representation terminates before the completion of specific tasks or the occurrence of specific events? | | | | |
| 4. The procedures you will follow if a dispute arises as to whether you earned all or part of the fee? | | | | |
| <u>For contingent fee agreements</u> | | | | |
| Have you considered whether the contingent fee arrangement is prohibited under IRPC 32:1.5(d)? | | | Lawyers are prohibited from charging: (1) a fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; <u>or</u> (2) a contingent fee for representing a criminal defendant. IRPC 32:1.5(d) . | Iowa Ethics Op. 98-03 (Sept. 2, 1998) (reverse contingent fees). |
| Does the agreement: 1. Clearly define the gross recovery that is subject to the percentage you earn? | | | | |
| 2. Explain client responsibility for costs and expenses (even if the client recovers nothing)? | | | | |
| <u>For costs and expenses</u> | | | | |
| Have you described costs and expenses to the client? | | | Advance expense payments are payments for contemplated expenses in connection with the lawyer’s services that are made before the expense is incurred. Advance expense payments must be deposited into the trust account and withdrawn only as the expense is incurred. Iowa Ct. R. 45.7(2)–(3) . The basis or rate of anticipated expenses for which the client will be responsible must be communicated to the client, <i>preferably in writing</i> . IRPC 32:1.5(b) . | SDCBA Legal Ethics Opinion 2013-3 , SAN DIEGO CTY. BAR ASS’N, July 16, 2013. |
| Have you considered collecting advance expense payments? | | | | |
| Do you specify: 1. (<i>If you advance costs or expenses</i>) When the client is obligated to reimburse you? | | | | |
| 2. The client’s responsibility for costs such as postage, copying, depositions, transcripts, service of process? | | | | |

PART B: TRUST ACCOUNTING

| Question | Yes | No | Ethical Implications | Additional Resources |
|--|-----|----|--|---|
| Do you hold funds for your clients or third parties as part of your legal representation of another? | | | | |
| Do you have one or more client trust accounts? | | | <p>Any lawyer in who receives from clients or third parties is required to maintain a trust account for:</p> <ol style="list-style-type: none"> 1. Advanced payment of fees that have not been earned 2. Advance payment of expenses 3. Funds that have been entrusted to the lawyer's care in connection with a representation <p>See Iowa Ct. R. 45.1.</p> <p>A bank, savings bank, trust company, savings and loan association, credit union, or federally regulated investment company may serve as a depository institution as long as the entity is authorized to do business in Iowa and is FDIC/NCUSIF insured. See Iowa Ct. R. 45.3.</p> <p>A pooled interest-bearing trust account ("IOLTA account") is generally required for a client's funds that are nominal or reasonably expected to be held for a short time. But funds may alternatively be deposited in a separate interest-bearing trust account on which the interest, net of any transaction costs, will be paid to the client; or a pooled interest-bearing trust account with subaccountings that provide for computation of interest earned by each client and payment of interest, net any transaction costs. For more guidance, see Iowa Ct. R. 45.4.</p> <p>Lawyers may designate a successor signatory on their trust account(s). See Iowa Ct. R. 45.11; see also Iowa Ct. R. 39.18 (succession planning).</p> <p>Jurisdictions vary in their trust account requirements. Lawyers who practice in multiple jurisdictions should familiarize themselves with jurisdiction-specific trust account rules.</p> | <p>OFF. OF PROF'L REGULATION OF THE SUP. CT. OF IOWA, TRUST ACCOUNTS IN IOWA (2018).</p> <p>Trust Accounts in Iowa, IOWA JUD. BRANCH.</p> <p>IOLTA, IOWA JUD. BRANCH.</p> <p>Ed Poll, Trust Accounts: Accountability, Access, and Advantages, LAW PRAC. TODAY, Jan. 24, 2015.</p> <p>Steven J. Best, A Lawyer's 7-Point Plan for Trust Account Management: How to Reduce liability and Avoid Sanctions with Good Trust Accounting Practices, LEXISNEXIS L. FIRM PRAC. MGMT. WHITE PAPER SERIES (2013).</p> <p>MANAGING TRUST ACCOUNTING FOR COMPLIANCE, LEXISNEXIS BEST PRAC. (2010).</p> |
| Do you have an IOLTA account? | | | | |
| Is your client trust account(s) clearly labeled as a trust account? | | | | |
| Is your client trust account depository institution authorized to do business in Iowa and FDIC/NCUSIF insured? | | | | |
| For funds held as part of your Iowa practice, is your trust account at an approved financial institution doing business in the State of Iowa? | | | | |
| Have you designated a successor signatory on your trust account(s), whose authority would become effective upon the occurrence of a specified event or events? | | | | |
| If you practice in more than one state or multiple jurisdictions: | | | | |
| 1. Do you maintain a client trust account in each state in which you practice? | | | | |
| 2. Do you follow each state's varying rules of professional conduct concerning trust accounts? | | | | |
| If client deposits exceed FDIC insurance limits (generally \$250,000 per depositor): | | | | |
| 1. Do you discuss the deposit insurance issue with your clients? | | | | |
| 2. Do you consider splitting the deposits over two or more banks? | | | | |
| 3. Do you consider whether the client would be entitled to the interest that accrues? | | | | |

| Do you have internal policies and procedures in place regarding trust accounting? | | | |
|--|--|--|--|
| When you receive client funds, do you consider whether a separate interest-bearing account should be used rather than the IOLTA pooled account? | | | <p>In determining the type of account to use in each situation, consider the likely period of deposit, the amount of interest the funds will likely earn, and the cost of establishing and maintaining a separate account for the benefit of the individual client. See Iowa Ct. R. 45.4(3).</p> <p>Financial records are required to be maintained in accordance with Iowa Ct. R. 45.2 and IRPC 32:1.15.</p> <p>A lawyer with direct supervisory authority over a nonlawyer is required to make reasonable efforts to ensure the nonlawyer's conduct is compatible with the lawyer's professional obligations. IRPC 32:5.3.</p> |
| Have you designated an individual within your firm to be responsible for the operation of the client trust account? | | | |
| If a non-lawyer has been delegated day-to-day trust account management duties: <ol style="list-style-type: none"> Has the non-lawyer been provided training that covers how to handle client or third party funds? | | | |
| <ol style="list-style-type: none"> Do you regularly review the trust accounting to ensure compliance with the Rules of Professional Conduct and Client Trust Account Rules? | | | <p>OFF. OF PROF'L REGULATION OF THE SUP. CT. OF IOWA, TRUST ACCOUNTS IN IOWA (2018).</p> <p>Trust Accounts in Iowa, IOWA JUD. BRANCH.</p> <p>Managing Trust Accounting for Compliance, LEXISNEXIS BEST PRAC. (2010).</p> |
| Do your policies ensure: <ol style="list-style-type: none"> Unearned fees remain in the client trust account until they have been earned? | | | |
| <ol style="list-style-type: none"> There is never a negative client sub-account balance? | | | |
| <ol style="list-style-type: none"> Contemporaneous notice to the client of the removal of earned funds? | | | <p>OFF. OF PROF'L REGULATION OF THE SUP. CT. OF IOWA, TRUST ACCOUNTS IN IOWA (2018).</p> <p>Ed Poll, Trust Accounts: Accountability, Access, and Advantages, LAW PRAC. TODAY, Jan. 24, 2015.</p> <p>Amy DeVan, Use of the Client Trust Account: What Not to Do, THE DOCKET, June 30, 2016.</p> |
| <ol style="list-style-type: none"> Business or personal funds are not deposited into the client trust account? | | | |
| <ol style="list-style-type: none"> All client funds are deposited directly into the trust account? | | | |
| <ol style="list-style-type: none"> Disputed funds are held in the client trust account until the dispute is resolved voluntarily or by court action? | | | <ol style="list-style-type: none"> Funds to pay or avoid imposition of fees and charges that are a lawyer's responsibility (but not allowable monthly service charges), and Funds belonging in part to a client and in part currently or potentially to the lawyer (but the portion belonging to the lawyer may be withdrawn when due unless disputed) <p>Iowa Ct. R. 45.1.</p> <p>Trust account records should be sufficiently detailed to identify the date, source, and description of each deposit, as well as the date, payee, and purpose of each disbursement. Iowa Ct. R. 45.2(3).</p> |
| <ol style="list-style-type: none"> Timely provision of accounting upon request to clients and/or third parties for whom you hold or have held funds? | | | |
| <ol style="list-style-type: none"> Retention of trust account records for a period of at least six years after the termination of representation? | | | |
| <ol style="list-style-type: none"> Monthly three-way reconciliations of the client trust account(s)? | | | <p>Promptly upon request, a lawyer must render a full accounting regarding property held by the lawyer belonging to a client or third party. IRPC 32:1.15.</p> |
| Do your monthly reconciliations ensure: <ol style="list-style-type: none"> The total of the client sub-account balance is the same as the bank statement balance (with adjustments)? | | | |

| | | | | |
|--|--|--|--|--|
| 2. The bank statement balance with adjustments is the same as the check register/general ledger balance? | | | Financial records that must be maintained are described in Iowa Ct. R. 45.2(3) , and include: | |
| To promote compliance with recordkeeping requirements, do you maintain: | | | | |
| 1. A general ledger that lists all transactions in the client trust account(s)? | | | <ul style="list-style-type: none"> • Receipt and disbursement journals, • Ledger records for all client trust accounting, • Copies of retainer and compensation agreements, • Copies of accountings to clients or third parties, | |
| 2. Separate client and administrative ledgers? | | | <ul style="list-style-type: none"> • Copies of bills for legal fees and expenses, | |
| 3. Copies of monthly trial balances and monthly reconciliations of the client trust account(s)? | | | <ul style="list-style-type: none"> • Copies of records showing disbursements on behalf of clients, • Checking records and bank statements, • Records of electronic transfers, • Copies of monthly trial balances and reconciliations, and • Copies of client files reasonably related to trust account transactions | |

VIII. ACCESS TO JUSTICE & CLIENT DEVELOPMENT

Lawyers have the duty to promote and to protect the public interest. This responsibility is outlined in Iowa Rule of Professional Conduct 32:6.1. One of the most significant issues tied to this duty is access to justice. “Access to justice” is a concept much broader than access to the courts and litigation; it encompasses a recognition that everyone is entitled to the protection of the law. It is about finding meaningful solutions to best serve Iowans as they engage with the justice system. Improving access to justice in Iowa requires change that reaches well beyond the traditional understanding of legal aid. The responsibility also falls to Iowa lawyers, law firms, and other for-profit legal organizations to look at what they might do to better meet their obligations to promote and protect the public interest. Encouraging pro bono or other volunteer work, as well as exploring alternative fee arrangements and limited scope representation (where appropriate and permitted), are just a few of the tangible steps that law firms and legal organizations can take to do their part to close the justice gap.

Client development is closely linked to access to justice. When lawyers retain clients using alternative fee structures or limited scope representation, more people gain access to legal services and lawyers expand their client base and diversify revenue streams. Providing legal services at reduced rates for low-income clients, adopting alternate billing models, and providing unbundled services are all ways that lawyers can increase access to justice while simultaneously developing new clients.

In 2016, the Iowa Supreme Court, upon the recommendation of the Iowa State Bar Association, established the Iowa Access to Justice Commission to find solutions to best serve Iowans who may encounter barriers to or difficulties with fully accessing the Iowa justice system. The 2019 report is available [here](#).

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|---|--|
| Does your business structure incorporate alternative operational strategies aimed at reducing expenses and improving long-term sustainability? | | | | |
| Do you assess: 1. The makeup of your monthly expenses and overhead? | | | Low expenses and overhead mean less money is required for a practice to be profitable and sustainable. In addition, tools like timekeeping and case management systems can increase productivity and reduce the need for staff while also promoting compliance with ethical rules such as IRPC 32:1.3 (Diligence) and 32:1.4 (Communication). Some cost-saving measures, such as sharing office space, may implicate ethical considerations. See, e.g., IRPC 32:7.5 cmt. 2 (Firm Names and Letterheads), 32:1.6 (Confidentiality). | Randall Ryder, How to Keep Your Solo Practice Sustainable and Lean , LAWYERIST (July 11, 2019). Kathryn Thompson, Keeping Your Office Sharing Arrangements with Other Lawyers Squeaky Clean Under the Ethics Rules , ABA CTR. FOR PROF'L RESP., May 2007. |
| 2. Whether business expenses (such as building costs, service providers, contractors, staff, equipment/supplies) could be reduced? | | | | |
| 3. Whether use of technology could increase your efficiency and your ability to provide legal services at a lower cost/hourly fee? | | | | |
| Is your office set-up conducive to providing services to a broader population? | | | | |

| Question | Yes | No | Ethical Implications | Additional Resources |
|--|-----|----|---|---|
| Do you provide training to help staff interact with the public and potential clients? | | | <p>Training may help lawyers and staff develop strategies for communicating with non-English speaking clients, low-income clients, and clients who may have had negative experiences with the justice system in the past.</p> <p>Hiring bilingual staff and/or providing interpreter/translator services may aid the office in outreach. It also promotes compliance with the Rules of Professional Conduct, including ensuring effective communication with (IRPC 32:1.4) and obtaining informed consent from (IRPC 32:1.0(e)) non-English speaking or English-as-a-second-language clients.</p> <p>“Every person who cannot speak or understand the English language and who is a party to any legal proceeding or a witness therein, shall be entitled to an interpreter to assist such person throughout the proceeding.” Iowa Code § 622A.2.</p> | <p>N.Y.C. BAR ASS’N COMM. ON MINORITIES IN THE PROF., BEST PRACTICES STANDARDS FOR THE RECRUITMENT, RETENTION, DEVELOPMENT, AND ADVANCEMENT OF RACIAL/ETHNIC MINORITY ATTORNEYS.</p> <p>MINORITY CORP. COUNS. ASS’N, CREATING PATHWAYS TO DIVERSITY.</p> <p>David Douglass, The Ethics Argument for Promoting Equality in the Profession, ABA J., Nov. 1, 2019.</p> |
| Do you have a policy or plan in place to promote cultural competency in your office? | | | | |
| Do you consider diversity as relevant to the effort to promote access to justice when recruiting new staff? | | | | |
| Do you have bilingual staff and/or access to interpreter/translator services? | | | | |
| Do you provide alternatives for clients with reduced ability to travel and/or clients who are unavailable during regular business hours? | | | | |
| Have you implemented alternative billing arrangements? | | | | |
| Have you considered: | | | <p>Alternative arrangements may include payment plans, reduced fees, sliding scale fees and “modest means” fee structures, unbundled services, and pro bono services.</p> <p>Although lawyers and clients have latitude to limit the scope of representation, the limitation must be reasonable under the circumstances and compliant with the Rules of Professional Conduct and other law. See IRPC 32:1.2 cmts. 6–8.</p> | <p>Justice Index 2016, NATIONAL CENTER FOR ACCESS TO JUSTICE, FORDHAM LAW SCHOOL.</p> <p>JANICE B. DAVIDSON, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., UNBUNDLING LEGAL SERVICES: OPTIONS FOR CLIENTS, COURTS & COUNSEL (2015).</p> <p>IOWA LEGAL AID.</p> <p>MUSCATINE LEGAL SERVICES.</p> <p>LEGAL AID OF STORY COUNTY.</p> <p>IOWA ST. BAR ASS’N, Legal Assistance; Low Income Legal Assistance Resources.</p> <p>IOWA JUDICIAL BRANCH, Representing Yourself – Overview.</p> |
| 1. Using alternative pay arrangements based on income level? | | | | |
| 2. Providing limited scope representation, i.e., unbundled services? | | | | |
| If you are unable to take a client, do you direct them to meaningful legal resources? | | | | |
| Do you regularly provide pro bono legal services or other volunteer services related to the legal system? | | | | |

| Question | Yes | No | Ethical Implications | Additional Resources |
|---|-----|----|--|---|
| Do you or your firm have a written pro bono or other volunteer policy? | | | Lawyers have a professional responsibility to provide legal services to those who cannot pay, and in accordance with rule 32:6.1 , should aspire to render at least 50 hours of pro bono services each year. | CANADIAN BAR ASS'N, The ABCs of Creating a Pro Bono Policy for Your Law Firm (Oct. 13, 2009). |
| Do you contribute financial support to organizations that provide legal services to persons of limited means? | | | | IOWA ACCESS TO JUSTICE COMM'N, 2019 REPORT, App. C (Access to Justice Corporate Playbook), App. E (Sample Pro Bono Policy Statement). |
| Is your marketing strategy designed both to increase business and to bridge the justice gap? | | | | |
| Are you involved in the Iowa Bar Association, a local bar association, and/or a specialty bar association? | | | Professional associations often help lawyers find pro-bono resources and other valuable resources for working with modest means or indigent clients. | SUCCESSFUL BUSINESS PLANNING: REPRESENTING THE MODERATE INCOME CLIENT , COLO. BAR ASS'N (2013). IOWA ST. BAR ASS'N Steve Olenski, The 7 Lethal Internet Marketing Mistakes Law Firms Make , FORBES, Mar. 5, 2015. |
| Do you have a website? | | | | |
| Do you use internet tools for marketing? | | | | |
| Do you market in nontraditional ways and reach out to underserved legal markets? | | | | |
| Do you evaluate your success in providing access to justice? | | | | |
| Do you track and evaluate the demographics of clients and where clients are from? | | | “As a public citizen, a lawyer should seek improvement of the law, access to the legal justice system, the administration of justice, and the quality of service rendered by the legal profession.” IRPC preamble cmt. 6 . | Marc Davis, How Pro Bono Representations Lead to Paid Work for Lawyers , ABA J., June 1, 2018. |
| Do you conduct interviews with clients at the end of representation to evaluate how they feel they have been treated in the legal system? | | | | |
| Do you or your law firm periodically review your success in reaching out to underserved populations? | | | | |

IX. WELL-BEING & INCLUSIVITY

It is essential for lawyers to develop healthy lifestyles that embrace work-life balance. In 2015, the ABA Commission on Lawyer Assistance Programs and the Hazelden-Betty Ford Foundation conducted a study of approximately 11,400 actively practicing lawyers from 19 states, which found approximately 21% qualified as problem drinkers, 28% struggled with depression, and 19% demonstrated symptoms of anxiety. The study also revealed almost one third of the lawyers reporting those issues were under the age of 30 and had been in practice for less than 10 years.

In addition, attraction and retention of quality staff has become increasingly challenging due to the reduction in law school attendance, aging in the profession, and rapidly changing technology. Diversity is when you count people; inclusiveness is when you make people count. Lawyers need both to have sustainable diversity in their workplaces. Studies show that keeping staff happy, healthy, engaged, and motivated increase retention rates.

This assessment presents a series of questions designed to help evaluate whether your practice promotes wellness and inclusivity. For additional resources and support, the [Iowa Lawyer Assistance Program](#) offers Iowa lawyers confidential assistance for any career-related challenges, including coping with work stress, anxiety, support in grieving a loss, or confronting substance-use issues. Other resources to consider include the [American Bar Association's Office of Diversity and Inclusion](#), and [What If I Say the Wrong Thing](#), by Verna Myers.

PART A: WELLNESS

| Question | Yes | No |
|---|-----|----|
| Do you or your firm/organization recognize the importance wellness plays in a person's professional and personal life? | | |
| Do you or your firm/organization have procedures to easily identify lawyers/staff with any kind of practice or personal problem? | | |
| Do you or your firm/organization have a non-punitive method of adjusting the workload of a lawyer experiencing a practice or personal problem until the issue is resolved? | | |
| Do you have a mentor, trusted colleague, family, or friend that you can turn to for support in the event you experience a personal or practice difficulty (or both) and need support? | | |
| Do you take steps to keep stress associated with the practice of law at a minimum? These may include: <ul style="list-style-type: none">• Taking time to spend with family and friends;• Volunteering time through community service organizations;• Planning and taking time off;• Reading a new book;• Engaging in physical activity;• Practicing yoga or meditation. | | |
| If you find yourself becoming stressed or anxious, are you familiar with simple techniques to quickly reduce stress including: <ul style="list-style-type: none">• Taking a deep breath;• Placing one hand on your upper chest, one on your abdomen, and breathing (a practice that activates calming neurotransmitters);• Opening your eyes and smiling (the act of smiling releases endorphins);• Saying to yourself: "I have the resources to deal with this" and then using those resources. | | |
| Does your firm/organization have policies and procedures that encourage work life balance/integration and that include: | | |

| Question | Yes | No |
|--|-----|----|
| <ul style="list-style-type: none"> • Taking their entitled breaks: lunch breaks, sick leave, annual leave. • Availability of family/parental leave. • Flexible hours when needed. | | |
| Does your firm/organization provide/offer appropriate and regular quality of life programs during regular business hours, and is everyone encouraged and able to take advantage of them? | | |
| Does your firm/organization's work environment promote a healthy lifestyle, for example, ergonomically correct work stations, work breaks, walking paths, and access to healthy food & drink choices? | | |
| Does your firm/organization have appropriate referrals for programs to assist with mental health issues (stress, anxiety, depression, bipolar, relationships, etc.)? | | |
| Does your firm/organization ensure awareness within the workplace of referrals for programs to assist with mental health issues? | | |
| Does your firm/organization have appropriate referrals for programs to assist with substance abuse & addiction issues (alcohol, drugs, gambling, sex, food, etc.) | | |
| Does the firm/organization have a dedicated budget to wellness? | | |

PART B: DIVERSITY/INCLUSIVENESS

| Question | Yes | No |
|--|-----|----|
| Has your firm/organization developed a rationale for the need for creating a more diverse and inclusive workplace that is tied to your firm/organization's business imperatives and strategies? | | |
| Have you taken steps to increase your awareness of implicit bias and other barriers that affect those underrepresented in the legal profession? [Consider the Project Implicit free online assessments at https://implicit.harvard.edu/implicit/aboutus.html .] | | |
| Have you assessed which groups with which you feel comfortable, or have a natural affinity, and taken steps to meet with or market to those groups that fall outside that list? | | |
| Have you developed and implemented an inclusivity plan that includes a written statement that defines inclusivity and the benefits you hope to gain from being inclusive? | | |
| Does your firm/organization regularly review the compensation structure to ensure that it demonstrates equal opportunities for all? | | |
| Has your firm/organization devised measures to evaluate diversity and inclusion initiatives and ensure accountability? | | |
| Has your firm/organization identified a person, department and/or committee to monitor your diversity/inclusiveness efforts? | | |
| Does the firm/organization have a dedicated budget to support diversity/inclusiveness efforts? | | |
| Has the firm/organization implemented training sessions for employees that focus on issues related to diversity/inclusiveness? | | |

PART C: MISCELLANEOUS

| Question | Yes | No |
|---|-----|----|
| Does management/senior staff set a good example for staff by creating, implementing, and monitoring dependable office policies and systems, including work-life balance and mentoring programs? | | |
| Are the above policies reviewed on a regular basis for effectiveness and up-to-date information? | | |
| Does Human Resources or management conduct exit interviews that allow for an honest and respectful discussion? | | |

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